

INTERNAL REVENUE SERVICE

Department of the Treasury

District
Director

Person to Contact: [REDACTED]
Telephone Number: [REDACTED]
Refer Reply to: [REDACTED]

CERTIFIED

P 105 7/4 2/0

Date: MAR 1 1993

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that you were incorporated on [REDACTED], under the nonprofit corporation laws of the State of [REDACTED].

According to your Articles of Incorporation, your organization was formed for charitable, religious, educational, and scientific purposes, and, in particular, to promote and support the visual art and visual artists of [REDACTED].

It is stated in the application that "the main goal of [REDACTED] is indeed to 'support and promote all members to the best of our ability' and we approach this goal in several ways." This includes: assisting with the real problems involved in making a living as artists, informing members of opportunities to display their work, as well as short and long term employment opportunities, arranging group shows for members, securing other benefits for members such as discounts with some local merchants. (See Exhibit 1.)

Membership in your organization consists of active visual artists working in the areas of photography, painting, pottery, fine art jewelry, fibers sculpture, fine art needle work, batik, print making and calligraphy. Your organization currently numbers over [REDACTED] members from [REDACTED] and nearby communities. Voting membership is restricted to practicing artists residing in [REDACTED] or its environs.

The principal activities of your organization are:

1. Owning and operating your own gallery where members may display and sell their works to the public;
2. Holding monthly meetings where members exchange information on opportunities to exhibit, sell and critique their work. Also, guest speakers are invited to lecture on art-related topics.

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3. Providing art classes, lectures, and workshops to the public by members who volunteer their time to instruct, speak and teach.

In the application, you state that your goal of providing marketing opportunities for your members conveys the obvious advantage of helping them earn a living by providing a chance to sell their work. In the past, your "marketing opportunities" consisted of group shows in various locations or ones in which members took turns displaying their works. For the past two years, you have had artwork on display at the [REDACTED]. The artwork on display is changed every two months. Member artists may submit up to two pieces of work, at \$[REDACTED] per piece, on a first-come first-served basis. If additional space is available, member artists may display more. The work is not juried: the only qualification being that the work is ready for presentation. To date, you indicate that you have never had to turn a member away. Should a work be sold, the member artist keeps the entire amount. You estimate that at least [REDACTED] pieces have been sold through the [REDACTED] gallery and elsewhere. (See Exhibit 2.)

With the acquisition of your own gallery on [REDACTED], you have a new venue for members to display and sell their works. Your gallery and art education center consists of a [REDACTED] square foot main floor, and [REDACTED] square foot lower level. The main floor is primarily the gallery space, and also has a bathroom, a small office, and a space for an artist's studio. This studio is currently being used by one of your members for working and teaching, and is open to the public. The member pays a monthly fee of \$[REDACTED] for this space. The downstairs will be used for classes and meetings. (See Exhibit 3.)

The first group of exhibitors was again filled from the membership on a first-come first-served basis. There is now a waiting list. "To insure that [REDACTED] can pay its rent without taking too much away from the artist," the financial arrangements are as follows: Exhibitors sign up for a 6 month or one year interval and pay a fee of \$[REDACTED] a month, plus a one-time \$[REDACTED] registration fee. Two artist may, if they choose, share space. They receive the proceeds from any works sold at the beginning of the month. If they sell over \$[REDACTED] in the month, you retain a [REDACTED]% commission of the proceeds to the extent that they exceed \$[REDACTED]. An additional [REDACTED]% is deducted for charge card sales. Otherwise the artist keeps the full amount. Members that display in the gallery must staff the gallery for two 4-hour shifts a month. Artist also have the option of paying a small fee to reserve a parking space at the gallery. You have been able to exhibit the work of [REDACTED] of your members. Of these, [REDACTED] members have sold at least one peice of artwork since the gallery opened. With every sale you include the artist's business card and any publicity material. You also try to record the costumer's name and address so that members can develop mailing lists. In addition, four times each year you hope to have two week group shows open to all members at locations other than your gallery under the terms described above. (See Exhibit 3).

[REDACTED]

The financial information submitted with the application shows gallery fees to be your single largest source of revenue. (See exhibit 4.)

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of corporations organized and operated exclusively for religious, charitable, literary, scientific, and educational purposes; no part of the net earnings of which inures to any private shareholder or individual.

Section 1.501(c)(3)-1 of the Income Tax Regulations relates to the definition of the organization and operation of organizations described in Section 501(c)(3). It is quoted, in part, as follows:

"(a) Organizational and operational tests. (1) In order to be exempt as an organization described in Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt. (2) The term "exempt purpose or purposes", as used in this section, means any purpose or purposes specified in Section 501(c)(3)...."

"(c) Operational test. (1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. (2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization seeking exemption under Section 501(c)(3) to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. U.S.....326 U.S. 279 (1945), the Supreme Court of the United States said, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes". This statement applies equally to any category of charitable purposes under Section 501(c)(3) of the Code.

Revenue Ruling 71-395, 1971-2 C.B. 228, provides that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under Section 501(c)(3) of the Code. The rationale used is that such a gallery is a vehicle for advancing the careers and promoting the sales of the works of the member artists. The gallery thus serves the private purpose of its members, which is not an exempt purpose.

Revenue Ruling 76-152, 1976-1 C.B. 151, held that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than the customary commercial charges and not sufficient to cover the cost of operating the gallery does not qualify for exemption. The Service held that the sale and subsequent payment of 90% of the sales proceeds to the individual artists conferred direct benefits to these individuals, and that such direct benefits are substantial by any measure and the organization's provision of them cannot be dismissed as being merely incidental to its other purposes and activities.

Your organization comprises a group of member artists who have formed an organization to support and promote its members. A substantial part of the activities of your organization involves the operation of a gallery where members may exhibit their works for sale, as well as providing members other additional opportunities to display and sell their works. In this respect your organization is similar to the organization described in Revenue Ruling 71-395, supra, and is serving as a vehicle to advance the careers of your member artists. Accordingly, you are not organized and operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Code.

Furthermore, to the extent that your organization sells the work of member artists and pays the proceeds, less a small commission, to your member artists, you are conferring a direct benefit upon your members. Revenue Ruling 76-152, supra, held that such benefits were substantial by any measure and could not be dismissed as being merely incidental to other purposes and activities.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code, since you are not organized and operated exclusively for charitable, religious, or other exempt purposes with the meaning of Section 501(c)(3).

You are required to file Federal Income Tax Returns.

[REDACTED]

Contributions made to you are not deductible by the donors as charitable contributions as defined in Section 170(c) of the Code.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file a brief of the facts, law and arguments (in duplicate) which clearly sets forth your position. In the event you desire an oral discussion of the issues, you should so indicate in your submission. A conference will be arranged in the Regional Office after we have had an opportunity to consider the brief and it appears that the conclusions reached are still unfavorable to you. Any submission must be signed by one of your principal officers. If the matter is to be handled by a representative, the Conference and Practice Requirements regarding the filing of a power of attorney and evidence of enrollment to practice must be met. We have enclosed Publication 892, Exempt Organization Appeal Procedures for Adverse Determinations, which explains in detail your rights and procedures.

If you do not protest this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

If you agree with this determination, please sign and return the enclosed Form 6018.

If we do not hear from you within 30 days from the date of this letter, this determination will become final. In accordance with Code Section 6104(c), we will notify the appropriate State officials of this action.

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018